MISCELLANY.

Wife's Duty to Support Husband.—In Brown *v.* State, 14 Ga. App. 25, 79 S. E. 1133, the court said: "Sometimes married women support worthless or helpless husbands, but to hold that they are legally bound to do so would put an unwarrantable burden upon the holy estate of matrimony and make undesirable for the woman a relation into which the law encourages her to enter. In the present state of the law the burden of supporting the family falls upon the husband; in return for which the law crowns him with the proud but sometimes meaningless title of 'head of the family.' If he would wear the crown he must bear the burden. Some day all this may be changed, but we are dealing with present-day law, and 'sufficient unto the day is the evil thereof.'"

Grand Jury Reform.—One of the causes contributing in many cases to the failure of the Criminal Court to convict is the grand jury.

In other words, except in very unusual cases, the grand jury is capable of being used for the benefit of the accused, but never for the people, for the strengthening of the state's case.

The guilty accused already has too much advantage under our criminal procedure; the scales are loaded in his favor, and every useless burden imposed upon the prosecution is an injustice to the law-abiding citizen.

Originally the grand jury was a select mass meeting of the people of a locality, got together to try any persons who were under suspicion. It heard no testimony whatever. The theory evidently was that, as most of the community had been got together, the grand jury would comprise those who personally knew of all the crimes that had been committed, and, if they knew about the crimes, then why bother with witnesses?

The accused persons were not present and were not represented. They were indicted, as Mr. Justice Matthews, speaking for the Supreme Court of the United States in Hurtado *v.* California, 110 U. S. 530, 4 Sup. Ct. 118, 28 L. Ed. 232, said, "upon common fame and general suspicion." Indictment was equivalent to punishment, for it subjected them to the barbarous ordeal by water. "If the ordeal fails, the accused person loses his foot and his hand. If it succeeds, he is nevertheless to be banished; accusation (indictment), therefore, was equivalent to banishment at least."

Mr. Justice Matthews, in the case just cited, observes: "It is better not to go too far back into antiquity for the best securities for our 'ancient liberties.'"

Beginning as a primitive mode of inquisition and trial, the grand

jury developed in modern times two diverse functions, inquisitorial and accusatory. These we will consider separately.

There are times when an inquisitorial body is needed for criminal law enforcement. When there are charges of boodle being used to influence Legislatures or city councils, or to corrupt the voters of a a district or a state; when public officials are banded together to violate laws; when powerful industrial or political interests conspire to defeat justice—then it may well be that prosecutors will fear to do their duty and need to have the aid of a body of citizenship, acting temporarily in an official capacity, to carry the responsibility of accusing powerful and malignant interests.

The grand jury, under such conditions, affords a safe and secret agency before which individual witnesses may come and safely disclose what they know. The piecing together of the testimony of a number of witnesses may suffice to make a prima facie case, so that the suspected persons may be put on trial by the indictment of the grand jury.

It is plain that the grand jury has a worthy function to perform and should not be abolished wholly. It can be extremely useful to the state when properly employed. The trouble is that we arbitrarily require its use in every kind of felony case, when it can be useful in not more than one case in a thousand.

It will be observed that, when employed as an inquisitorial body to ferret out crime, the grand jury does nothing more than bring an official accusation against the suspected person, requiring him to submit to trial in a regular court. That is the only affirmative step which can ever come from grand jury procedure—the making of an accusation.

It is perfectly clear, then, that if the case is one of the 999 which do not call for inquisitorial powers, the grand jury has been resorted to in vain. Its work is a mere waste of energy, because there are simpler and better ways of bringing an accusation of felony against a suspected person.

Offenses are divided into two broad classes—misdemeanors and felonies. The misdemeanor cases are much more numerous and some of them present more difficult questions of law and fact than the felony cases, and some carry severe penalties.

But in all misdemeanors there is no resort to the grand jury. The practice is for the magistrate to take the sworn complaint of a person who knows the facts as a basis for issuing a warrant. This may be supplemented by the questioning of other witnesses under oath, to make a prima facie case. If a person has been "caught in the act" and arrested first, there is a sworn complaint by the officer, or some person cognizant of the facts, before there can be trial.

In the case of misdemeanors a trial follows before the magistrate

or before a judge of the municipal court, where the accused has the right to a jury of twelve.

This is a direct and simple method of subjecting suspected persons to trial. It preserves the right of the accused, and does not subject the state and the state's witnesses to any unnecessary effort. A man's liberty is not taken, except upon the authority of a court, which first questions witnesses under oath, thus making a prima facie case. There is no complaint that this results in injustice to the accused. The percentage of blunders must be exceedingly low.

But if the offense which has been committed is one classified as a felony, there is no method at present which is both simple and safe. If the first step of all is indictment by the grand jury, on presentment of the prosecutor, the suspected person is arrested and subjected to trial. This is a simple method. But it is not a safe one. It does not sufficiently preserve the rights of both state and accused.

There is always danger that the rights of the accused will be trespassed upon, because the grand jury hearing is wholly ex parte; that is to say, the accused is not present, and he is not permitted to be represented by counsel. In fact, he is likely not to know anything about the charges being brought against him in the secrecy of the grand jury room. The first thing he knows about an indictment is when an officer takes hold of his collar.

It is a very serious thing to be accused of a felony. In a case of conspiracy, when secrecy is necessary, to prevent some of the rascals from escaping before the whole gang is rounded up, the ex parte proceeding is justified. In ordinary cases it is not a proper proceeding, because it gives a state's attorney too much power over the liberty of the citizen. The grand jury is in all routine matters entirely dependent upon the prosecutor. It indicts those whom he suggests should be indicted, and it dismisses presentments against those whom he thinks should go free.

It is not often that any prosecutor deliberately abuses the trust reposed in him. It is doubtless very rare that any person is indicted, who would not be indicted if he were permitted to be present in the grand jury room and submit his side of the case.

While injustice to the accused is possible, it is not the worst defect. A more serious defect is that the grand jury, despite its irresponsible and despotic star chamber power, often fails to indict many persons who ought to be indicted. The people suffer from the inherent weakness of this form of bringing accusations. Too many guilty persons escape the meshes of the grand jury.

Nearly a century ago certain states found a simpler and safer way of accusing a person of felony than through grand jury procedure, and for many years the grand jury has not been used at all in a majority of the states, or has been used only for strictly inquisitorial purposes, to which it is well suited.

The rival procedure is simply this—that arrest shall be made by warrant of a court, based upon a sworn complaint, in the case of felony, just as in the case of misdemeanor. Then, in felony cases, instead of proceeding directly to trial, a preliminary examination of witnesses is had before the magistrate

This modernized and reformed procedure affords the suspected person a day in court, right at the outset, instead of subjecting him to a star chamber proceeding. This method is not only better for the suspect, but it is better for the state. The prima facie case made out by the complaint must be supported by evidence adduced in a contentious hearing before the state will assume the cost of trial in a regular criminal court. The greatest advantage to the state lies in the fact that the people's witnesses are questioned and put on record while their memories are still fresh and before they have been reached by the accused.

If it is a clear case of guilty, the preliminary examination is likely to be waived by both state and respondent; the magistrate consenting. If the respondent is afraid that his witnesses will leave or be tampered with, he can insist upon taking their testimony forthwith, and the record can be used in the subsequent trial. More frequently the state resorts to this practice.

If after the preliminary examination the magistrate finds that the offense has been committed, and that there is probable cause for believing that the accused is guilty thereof, he so records his finding and enters an order requiring the accused to be committed for appearance at the next term of the criminal court for trial. His return to this court embodies the complaint and warrant.

The only other technical step in accusation is the filing by the prosecutor of a pleading, called an information, in the criminal court, and its reading before the accused is asked to plead guilty or not guilty.

That is the simple, straightforward, modern way by which persons suspected of felonious crime are subjected to trial in a majority of the states of the Union. It protects the rights of the state and of the accused, and makes a direct and inexpensive route to the trial court.

It must be remembered that time is the most important element in the punishment of crime. If procedure is prompt, the state's witnesses will remember. There will not be opportunity for the accused person and his friends and accomplices to threaten and frighten the state's witnesses and buy them off.

But, even when the state's witnesses are not scared or bought off, the time involved and the effort to make a showing before the grand jury is wearisome and prejudicial. The state's witnesses have lost time in testifying at the preliminary examination. That is a good use for their time.

But why then require them, after some days or weeks, to give up another day or two to tell their story to the grand jury? Subsequently they must appear in criminal court and go over it all again. Every court appearance is tedious, wasteful, and irritating to all sensible persons who value their time.

Prosecuting, even in the role of witness, is a distinctly unpleasant thing. Oftentimes it involves a good deal of danger, because crooks take vengeance, directly or indirectly, upon conscientious witnesses. We go further and subject the witness to almost as much burden as the accused, who usually enjoys his liberty on bail, if he is a professional crook.

Is it any wonder that witnesses conveniently forget, or get lost, or help out the defendant? Everybody knows that it is risky to know anything about an offense. Ignorance saves one from a world of trouble.

Another reason for omitting grand jury procedure in the great mass of routine prosecutions is that this routine work greatly interferes with the use of the grand jury for its proper function, that of investigating conspiracies. We employ the grand jury so much for useless work that it cannot properly do the only work which it can do well. It is a thorough perversion.—*Journal of the American Judicature Society.*